



MICHIGAN SELF-INSURERS' ASSOCIATION

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September 27, 2011

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House Commerce Committee
Michigan House of Representatives
P.O. Box 30014
Lansing, MI 48909-7514

Re: House Bill #5002

Dear Chairperson:

The Michigan Self-Insurers' Association [MSIA] is writing to respectfully offer its commentary on House Bill #5002, the proposed reforms to the workers' compensation statute. First, by way of background, the MSIA is a 60 year old organization comprised of large, mid-sized and small employers in Michigan who are self insured for workers' compensation purposes. The organization counts amongst its members the domestic three automakers, utility companies, medical providers, retailers, and educational institutions amongst many other members. The MSIA is a single issue organization; that is, we devote ourself only to educating legislators on workers' compensation matters and we strive to ensure viable self insurance for Michigan's employers.

The MSIA wishes to offer an overview of HB #5002's two primary goals. First, the workers' compensation statute will be 100 years old next year and is in desperate need of modernization. That is one goal of the reform bill. Second, the bill's reforms codify certain current Supreme Court case law into the statute in order to bring certainty to a system that has unfortunately vacillated greatly in recent years due to differing court rulings.

With respect to the first goal (modernization), a couple of illustrations of the statute's current deficiencies best make the point. Employers pay for medical treatment occasioned by work related injuries under our workers' compensation statute. This includes payments for knee replacements, hip replacements, and the like, as well as any and all reasonable and necessary medical care related to the work injury. Fortunately, due to scientific advances, medical implants such as knee replacements often completely

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remedy the employee's problem allowing the employee to return to work with little or no restrictions. Nevertheless, an outdated provision in the workers' compensation statute requires the employer to pay the employee weekly workers' compensation benefits (even after the employee has returned to work often with no restrictions) because the evaluation of the employee's physical problem must be made *without* taking into consideration the joint replacement surgery. See *e.g., Trammel v Consumers Energy* 2009 ACO #126. The Michigan Supreme Court has said this gaping hole in the statute is "best addressed to the legislature who has the power to amend the statute." *Trammel v Consumers Energy* 486 Mich 975 (2010). A provision within HB #5002 does just that: it amends the statute to allow the workers' compensation adjudicators to take into account the ameliorative and rehabilitative effects of joint replacement surgeries.

Another more simple example of the need to modernize the statute is the current interest rate provision. Under the current statute, the interest rate employers must pay on accrued weekly workers' compensation benefits is 10% per annum. MCL 418.801(6). While that interest rate reflected prevailing interest rates at the time it was enacted in the 1980's, it has no relationship to current interest rates. HB #5002 changes that to provide for an interest rate linked to an index reflecting current interest rates, just as in the civil courts of the state.

The other important goal of HB #5002 is clarifying and stabilizing Michigan workers' compensation law so as to make Michigan competitive with other states in terms of attracting and keeping business. There is a real need to codify certain Supreme Court case law so that all stakeholders can know precisely what to expect in the law, rather than stakeholders being subject to vacillating court interpretations of important definitions in the statute. A few examples of how the workers' compensation system has careened back and forth on fundamental questions over the past fifteen years is worthwhile.

The current definition of disability in the statute is exceedingly important because it determines when weekly wage loss benefits are payable. The Michigan Supreme Court in 1995 originally interpreted the current definition of disability in a way that reflected legislative intent. The legislative intent was for a smaller pool of persons to be eligible for weekly benefits, as opposed to the open ended approach for which Michigan had unfortunately become known. The Supreme Court recognized the legislative desire to narrow the previously relaxed definition of disability in *Rea v Regency Olds/Mazda/Volvo*, 450 Mich 1201 (1995). Thereafter the workers' compensation system adjusted to the *Rea* decision. However, two years later a differently composed Supreme Court overruled *Rea* and said the current definition intended the more relaxed definition of disability to continue. That Supreme Court case was *Haske v Transport Leasing, Inc.* 455 Mich 628 (1997). The workers' compensation system had to readjust to this new interpretation. After that, the Court changed course again and said the interpretation announced in *Rea* had been correct all along. That case was *Sington v Chrysler Corporation*, 467 Mich 144 (2002). Given the vacillations, many in the workers' compensation system were understandably left unsure of things. That required the Supreme Court to reiterate in *Stokes v Chrysler LLC*, 481 Mich 266 (2008) that the correct interpretation is indeed the one described in *Sington* and *Rea*.

The reform bill would place *into the statute* the current interpretation of disability described in *Sington/Stokes/Rea* so as to prevent further judicial flip-flops.

Similar flip-flops have occurred in regard to court interpretations of other fundamental concepts such as what constitutes a "work injury" and when is an employee to be considered "mentally disabled".

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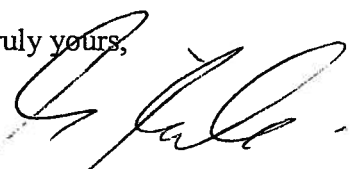
Compare and contrast *Robertson v DaimlerChrysler Corp*, 465 Mich 732, (2002) and *Gardner v Van Buren Public Schools*, 445 Mich 23 (1994) [re: mental disabilities] and *Rakestraw v General Dynamics Land Systems, Inc*, 469 Mich 220 (2003) [re: what constitutes an "injury"].

Finally on this point, there is a middle ground between "no disability" and "total disability" in the statute. That middle ground is *partial* disability. Partial disability has been a contentious point in workers' disability compensation for a long time, similar to the concepts discussed immediately above. Over the last few years, our Supreme Court has emphasized the need to respect and apply the partial disability provision. See, *Lofton v Autozone, Inc*, 482 Mich 1005 (2008). To remove any doubt, similar to the definition of disability problem described above, the Supreme Court has repeatedly this year emphasized it means what it says in *Lofton*, i.e., the partial disability provision must be applied to partially disabled workers. See e.g., *Harder v Castle Bluff Apartments* 489 Mich 951 (2011); *Umphrey v General Motors Corp*, 489 Mich 978 (2011); *Vrooman v Ford Motor Company* 489 Mich 978 (2011). HB #5002 codifies what the Supreme Court has been saying on partial disability to bring closure and stability on this point as well.

To sum up, the MSIA believes the time has arrived to modernize our nearly 100 year old statute to keep pace with scientific and other advances. And, the twists and turns in courts' interpretation of pivotal provisions in the statute need to stop. The current state of the law on these important points should be codified in the statutes so that vacillations in court rulings - which often depend on the composition of the Supreme Court at any given time - end. The modernization and stability afforded by HB #5002 will improve Michigan's workers' compensation climate. The result will be a more attractive environment for locating and expanding businesses. We will be a state with an updated and stable workers' compensation system.

Thank you for the opportunity provided to the MSIA to express its views on this important and necessary piece of legislation.

Very truly yours,



Gerald M. Marcinkoski
Executive Secretary
Michigan Self-Insurers' Association

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